

**Office of Chief Counsel
Internal Revenue Service
memorandum**

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subject: Revenue Ruling 2000-6

This memorandum addresses your request seeking clarification of Revenue Ruling 2000-6, 2000-1 C.B. 512, which concerns the information reporting requirements for payments made to election workers. Specifically, FSLG requested clarification of the holdings in Situations 4 and 5 of the ruling. In addition, your office submitted a list of related questions which indicate that the FSLG specialists are concerned about the application of the Federal Insurance Contributions Act (FICA) tax when an election worker also performs services in another employee position for the same state or local entity (government entity).¹

This memorandum discusses the applicable law, Rev. Rul. 2000-6, and the FICA tax treatment of payments made to election workers, who also perform non election worker services for the same government entity. Based on the list of questions provided, we drafted five examples that generally cover their scope. This memorandum is intended to assist state and local taxpayers in better understanding the scope of Rev. Rul. 2000-6, and to assist FSLG specialists when handling cases that fall outside the examples of the revenue ruling. This document should not be used or cited as precedent.

ISSUE

Whether Revenue Ruling 2000-6, specifically Situations 4 and 5, provide government employers with a basis to neither pay, withhold, nor report FICA on the wages of employees, who perform both election and non election worker services for the same

¹ Revenue Ruling 2000-6 was published following request for guidance from the National Conference of State Social Security Administrators (NCSSSA). NCSSSA advised that election workers typically do not receive payments that exceed the dollar thresholds in the Code.

government entity, so long as payments for election worker services do not exceed Internal Revenue Code (the Code) sections 3121(b)(7)(F)(iv)'s and 3121(u)(2)(B)(ii)(V)'s applicable dollar thresholds?

CONCLUSION

Revenue Ruling 2000-6 does not authorize a government entity to take the position that wages paid to employees, who perform both election and non election worker services for the same government entity, are exempt from FICA taxes if wages paid for election worker services are below the applicable dollar thresholds under Code sections 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V). As explained herein, a careful reading of Situations 4 and 5 makes clear that its holdings do not consider the FICA tax treatment of the portion of a state or local government employee's wages paid for non election worker services. Rather, Rev. Rul. 2000-6 is *very limited* in scope. It provides guidance on whether the amounts paid to an election worker must be reported, and if so, how the Code's information reporting requirements should be applied. In particular, Situations 4 and 5 of the revenue ruling illustrate to what extent an employee's wages must be reported when the employee performs both election and non election worker services for the same government entity, and the payments for non election worker services are subject to income tax withholding. The revenue ruling is not intended to take the place of separately analyzing whether wages paid to state or local government employees for non election worker services are subject to FICA.

LAW AND ANALYSIS

Section 61(a) of the Code provides that gross income means all income from whatever source derived, including compensation for services. Section 61(a)(1). Thus, all compensation a worker earns from performing any service is includible in such worker's gross income in the year the services are performed.

Federal Contributions Insurance Act (FICA)

Sections 3101(a) and 3111(a) of the Code impose Old-Age, Survivors, and Disability Insurance (OASDI) taxes on wages paid to employees. Sections 3101(b) and 3111(b) impose Hospital Insurance (HI) taxes on the wages paid to employees. These two taxes comprise FICA. Taxes under FICA apply to "wages" that are paid for "employment". See, sections 3121(a) and (b).

Section 3121(b)(7) governs whether state and local workers are subject to the OASDI portion of FICA. It provides the general rule that service performed in the employ of a state or local government is excepted from "employment". However there are several exceptions to this general rule. Notably, section 3121(b)(7)(E) provides that the exception from employment does not apply where state or local services are covered by a Section 218 agreement.² In addition, section 3121(b)(7)(F) provides that section

² A "Section 218 agreement" is an agreement that a state can enter into with its respective state Social

3121(b)(7)'s general exception from employment does not apply unless the individual is a member in the state or local government's "retirement system". The employment tax regulations under section 3121(b)(7)(F) are applied to determine whether an employee is a member of a retirement system. Regulation section 31.3121(b)(7)-2(c)(2) provides that if an individual is a member of a retirement system with respect to service performed in one position, then the employee is generally treated as a member of a retirement system with respect to all services performed for the same state or local government. Thus, service performed in the employ of a state or local government is subject to the OASDI portion of FICA if the services are either covered under a Section 218 agreement, or the individual performing the services is not a member of the state or local government's retirement system. See, sections 3121(b)(7)(E) and (F).

Rules governing whether state and local employees are subject to the HI portion of the FICA tax are found in section 3121(u) of the Code which generally extends the HI portion of the FICA tax to wages for services performed by employees of state and local entities hired after March 31, 1986. Employees hired before that date may be exempt from the HI tax if they meet the continuing employment exception, however, an employee may not meet the continuing employment exception unless the employee is also a member of a retirement system within the meaning of section 3121(b)(7)(F). See, Revenue Ruling 2003-46, 2003-1 C.B. 878. Therefore, it is possible that state and local employees' services may be exempt from the OASDI portion of FICA pursuant to section 3121(b)(7)(F), but subject to the HI portion of FICA. See, section 3121(u)(2).

Both sections 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V) provide a specific rule for election workers; each section provides that the services of an election worker are not employment for purposes of the OASDI or HI portions of FICA, if the worker's total remuneration is less than \$1,000 during the calendar year. This \$1,000 threshold amount is annually indexed and adjusted for inflation. For calendar year 2007, the applicable amount is \$1,300. When wages paid to an individual for services performed as an election worker meet or exceed the applicable dollar threshold, this exception from employment ceases to apply, and all amounts are subject to the OASDI and HI portions FICA; including the first \$1,300.³ Therefore, remuneration paid to an election

Security Administrator in order to provide social security benefits for particular classes of state and local employees referred to as "coverage groups". States are given the authority to enter into such agreements pursuant to section 218 of the Social Security Act (42 U.S.C. section 418), and hence the agreement's commonly-referred to name. Originally, when states signed on to social security coverage, they contractually agreed to pay the equivalent of FICA taxes with respect to the employees within coverage groups. However, the Omnibus Budget Reconciliation Act of 1986, Pub. L. No. 99-509, amended the Social Security Act and the Code to provide that payments for coverage under Section 218 agreements were FICA taxes. Section 3121(b)(7)(E) was added to the Code to provide that "employment" includes services included under a Section 218 agreement entered into pursuant to the Social Security Act.

³ For services performed before January 1, 1995, the section 3121(u)(2)(B)(ii)(V) exclusion was for remuneration of less than \$100. Rev. Rul. 88-36, 1988-1 C.B. 343, A2, provides that an election worker is subject to HI tax unless the remuneration paid to the worker in a calendar year is less than \$100.

worker during calendar 2007, which is less than \$1,300, will not be subject to either the OASDI or HI portion of FICA.

The specific FICA exemptions for election workers under sections 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V), will not apply if the election worker services are covered by a Section 218 agreement. If that is the case, the extent to which the payments are subject to FICA depends upon the terms of the Section 218 agreement and not the provisions of the Internal Revenue Code. See, section 3121(b)(7)(E).

Applying section 3121(b)(7) and 3121(u) to election workers is complex. There are several possibilities and the examples discussed later in the memo will illustrate the following scenarios.

- Section 218 Coverage. If the election worker services are covered by a Section 218 agreement, the terms of the agreement govern the application of the FICA tax.
- Election worker services only. Section 3121(b)(7)(F)(iv) and section 3121(u)(2)(B)(ii)(V) apply if the individual performs only election worker services for the government entity.
- Retirement system coverage. If the election worker also performs services in another employee capacity for the same employer and is a member of the government entity's retirement system with respect to such services, regulation section 31.3121(b)(7)-2(c)(2) provides the employee is generally treated as a member of a retirement system with respect to all services performed for the same state or local government entity. Thus, the election worker's services would not be subject to the OASDI portion of FICA regardless of the amount paid for such services. However, the election worker payments may still be subject to the HI portion of FICA if it meets or exceeds section 3121(u)(2)(B)(ii)(V)'s applicable dollar threshold.
- No section 218 coverage and no retirement system coverage. If the election worker also performs services in another employee capacity for the same employer the election worker services are not covered by the section 218 agreement and the worker is not a member of a government entity's retirement system, then the rules of sections 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V) apply -- the wages paid for election worker services are subject to FICA only if the payments exceed the applicable threshold amounts.

Income Tax Withholding

Section 3401(a) of the Code provides that, for purposes of income tax withholding, the term "wages" means all remuneration (other than fees paid to a public official) for services performed by an employee for an employer. Section 31.3401(a)-2(b)(2) of the Employment Tax Regulations states that amounts paid to precinct workers for services performed at election booths are "in the nature of fees paid to public officials" and not subject to income tax withholding. Hence, all wages paid for election worker services

are excluded from the income tax withholding requirements.

Information Reporting Requirements

Sections 6041(a) and 6051(a) of the Code both impose a duty to file and furnish information returns of compensation paid to workers. Section 6041(a) provides:

All persons engaged in a trade or business and making payment in the course of such trade or business to another person, of rent, salaries, wages, premiums, annuities, compensations, remunerations, emoluments, or other fixed or determinable gains, profits, and income ... of \$600 or more in any taxable year ... shall render a true and accurate return to the Secretary, under such regulations and in such form and manner and to such extent as may be prescribed by the Secretary, setting forth the amount of such gains, profits, and income, and the name and address of the recipient of such payment.

Under section 1.6041-1(b)(1) of the Income Tax Regulations, the phrase "all persons engaged in a trade or business" as used in section 6041(a) of the Code, includes an organization, the activities of which, are not for the purpose of gain or profit. Therefore, subject to limited exceptions described below government entities are under a general duty to file information reports reflecting compensation paid to it workers.

Section 1.6041-1(a)(2) generally requires information regarding payments to be made on either a Form 1096 or a Form 1099. However, section 1.6041-1(a)(2)(ii) provides that compensation paid to an employee by an employer shall be reported on a Form W-2. Under section 1.6041-2(a)(1), payments of wages that are not subject to income tax withholding must be reported on Form W-2 if the sum of the payments is \$600, or more in a calendar year. This rule applies even when a portion of the employee's compensation is not subject to income tax withholding. For example, if an employer paid an employee a total of \$800 that consisted of a \$500 payment that was subject to income tax withholding, plus a \$300 payment that was not subject to income tax withholding; the entire \$800 sum must still be reported on a Form W-2. The result would be the same even if the entire \$800 was not subject to income tax withholding. An employer must report on a Form W-2 all compensation paid to an employee if such compensation payments total at least \$600.

Section 1.6041-2(a)(1) provides that an employer may elect to use more than one Form W-2 to report the separate components of an employee's compensation that are required to be reported on Form W-2. For example, amounts paid to an individual for services as an election worker may be reported on one Form W-2, while amounts paid to the employee for service in another capacity may be reported on a second

Form W-2. The employee's total compensation must still be aggregated for purposes of determining whether the amounts are required to be reported in the first place, i.e., whether such aggregate payments total at least \$600. See, section 1.6041-2(a)(1) of the Income Tax Regulations.

In addition to the reporting requirements under section 6041(a) of the Code, section 6051(a) imposes a reporting requirement on every person required to or who would have been required to deduct and withhold FICA or income tax from an employee. Under section 6051, there is no dollar threshold before reporting is required. The employer must report all amounts paid to an employee. Typically, it is section 6051, not section 6041 that requires employers to file and furnish information returns. There are very few circumstances in which an employer does not withhold FICA or income taxes on wages paid to an employee.

Discussion

The General Income Tax Withholding and FICA Tax Treatment of Payments Made to Election Workers

Compensation of an election worker is not subject to income tax withholding. As mentioned, determining whether the compensation is subject to FICA is more complex. The first step is to determine whether election worker's services are covered by a Section 218 agreement. If the services are covered under the applicable Section 218 agreement, the compensation will be subject to FICA in accordance with the terms of the agreement and it will not be necessary to consult the Internal Revenue Code.

If the election worker services are not covered by a Section 218 agreement and the worker is not employed in another capacity by the government entity, sections 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V) apply. Thus, whether the payments are subject to FICA depends upon whether the amount paid meets or exceeds the applicable threshold amounts.

If the election worker services are not covered by a Section 218 agreement and the worker is employed in another capacity by the government entity, the first step is to determine whether the individual performing the services is a member of a retirement system maintained by the state or local government. Section 3121(b)(7)(F) excepts services performed for a state or local government, from employment, if the services are performed by an individual who is a member of a retirement plan maintained by the state or local government. If an individual is a member of the entity's retirement system, and also performs election worker services which are not covered by the retirement system, then payment for election worker services are not subject to the OASDI portion of FICA; regardless of the payment amount. Section 31.3121(b)(7)-2(c)(2) of the regulations provides that whether an employee is a member of a retirement system is determined on an entity by entity basis and not a position by position basis. Thus, if an employee is a member of a retirement system with respect to service he or she

performs in one position in the employ of the entity, the employee is generally treated as a member of a retirement system with respect to all services performed for the entity. Although the regulations also require that part-time, seasonal and temporary employees be immediately vested and that their compensation be counted towards their retirement benefits, these requirements do not apply to election workers. Regulation section 31.3121(b)(7)-2(d)(iii) excludes election workers described in section 3121(b)(7)(F)(iv) from the definition of a part-time, seasonal or temporary employee. Thus, even if the amount paid for election worker services exceeds Code section 3121(b)(7)(F)(iv)'s applicable dollar threshold, the amount will not be subject to the OASDI portion of FICA if the election worker is a member of the state or local government employer's retirement system.⁴

Once a determination is made that the individual's election worker services are not covered by a 218 agreement and that the individual is not a member government entity's retirement system the next step is to determine whether the election worker services are subject to FICA. If the amounts paid are less than the dollar thresholds in Code sections 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V) no FICA applies.⁵ However, once the total payments for the election worker services in the calendar year meet the threshold -- \$1,300 for 2007 -- the entire amount paid is subject to FICA.

The General Information Reporting Requirements for Payments Made to Election Workers

Section 6041(a) of the Code applies to payments of compensation that are not subject to FICA or income tax withholding. If an individual's election worker compensation is not subject to FICA tax, section 6041(a) requires reporting if the aggregate compensation payments to the individual total \$600 or more for any taxable year. In order to determine whether the \$600 threshold has been met, section 1.6041-2(a)(1) of the Income Tax Regulations provides that all compensation, including amounts not subject to income tax withholding, must be taken into account.

To the extent the payments must be reported, they must be reported on a Form W-2, not a Form 1099, since election workers are employees. See, section 1.6041-2(a)(1). However, an employer may choose to report payments made for election worker services on a separate Form W-2. For example, if a local government paid an employee a \$50,000 in salary, plus \$200 for election worker services, then the government may furnish the individual with two separate Forms W-2; one reporting \$200 for election worker services, and the second reporting the employee's \$50,000

⁴ If FSLG encounters a situation in which an employer asserts that an election worker meets the continuing employment exception, please call TEGE area counsel to discuss the application of section 3121(u).

⁵ Note and as mentioned it must also be determined whether payments made to election workers exceed the threshold amount under section 3121(u)(2)(B)(ii)(V) for Medicare purposes even if the worker is a member of a retirement system under section 3121(b)(7)(F).

salary. Situations 4 and 5 of Rev. Rul. 2000-6 illustrate how these reporting requirements apply.

Revenue Ruling 2000-6

The primary objective of Rev. Rul. 2000-6 is to illustrate how the reporting requirements under sections 6041(a) and 6051(a) of the Code apply to wages paid for election worker services. The ruling has five situations involving payments made by a government entity for election worker services. Situations 1, 2, and 3 describe the reporting requirements for amounts paid for election worker services to individuals who are not employed by the government entity in any other capacity. Situations 4 and 5 concern the reporting requirements for amounts paid to individuals receiving payments for election worker services and other services from the same entity.⁶

Situation 1 Facts:

Government A pays V \$200 in a calendar year for services as an election worker. A does not employ V in any other capacity. The services of A's election workers are not covered by a § 218 agreement. V is not covered by a retirement plan maintained by A.

Situation 1 Holding:

Neither FICA tax nor income tax withholding applies to the \$200 paid to V. The reporting requirements of § 6041(a) apply. Because V earns fees that are less than \$600, Government A is not required to issue Form W-2 to V.

Discussion of Situation 1:

The services of A's election workers are not covered by a section 218 agreement and V is not a member of a retirement system maintained by A. However, A's payment to V for election worker services is below the threshold amount under sections 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V). Since the payment is not subject to FICA or income tax withholding, section 6051 does not apply. Furthermore, section 6041 does not require any reporting because the amount paid is less than \$600.

Situation 2 Facts:

Government B pays W \$200 in a calendar year for services as an election worker. B does not employ W in any other capacity. The services of B's

⁶ Each situation specifies that the election worker is not covered by a retirement plan maintained by the employer, but there is no discussion of why this fact is included. That omission appears to be confusing readers. We believe this fact was included to limit the scope of the ruling to election workers governed by the specific FICA exceptions for election worker services making it unnecessary to consider the affect of participation in a retirement plan.

election workers are covered by a § 218 agreement if their remuneration is \$100 or more in a calendar year. W is not covered by a retirement plan maintained by B.

Situation 2 Holding:

FICA tax, but not income tax withholding, applies to the \$200 paid to W because the fees exceed the \$100 threshold in the § 218 agreement. Government B must follow the reporting requirements of § 6051(a), reporting on Form W-2 the fees of \$200 and the FICA tax withheld.

Discussion of Situation 2:

In this case, section 6051 of the Code applies because the payment was subject to FICA. Therefore, B is required report the \$200 on Form W-2.

Situation 3 Facts:

Government C pays X \$1,100 in a calendar year 2000 for services as an election worker. C does not employ X in any other capacity. The services of C's election workers are not covered by a § 218 agreement. X is not covered by a retirement plan maintained by C.

Situation 3 Holding:

FICA tax, but not income tax withholding, applies to the \$1,100 paid to X for calendar year 2000. Government C must follow the reporting requirements of §6051(a), reporting on Form W-2 the fees of \$1,100 and the FICA tax withheld.

Discussion of Situation 3:

Situation 3 is the same as Situation 1 except the payment exceeds the dollar threshold in sections 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V). In 2000, the threshold amounts were \$1,100. Therefore, both the OASDI and HI portions of FICA apply to the entire \$1,100. Once the threshold was met, then the entire \$1,100 amount became subject to FICA. Since the \$1,100 payment is subject to FICA, section 6051 requires C to report the \$1,100 payment on a Form W-2.

Situation 4 Facts:

Government D pays Y \$200 in a calendar year for services as an election worker. D also employed Y in another capacity, in which Y earned wages of \$300 that are subject to income tax withholding. The services of D's

election workers are not covered by a § 218 agreement. Y is not covered by a retirement plan maintained by D.

Situation 4 Holding:

Neither FICA tax nor income tax withholding applies to the \$200 paid to Y for services as an election worker, but the \$300 payment is subject to income tax withholding. Government D must follow the reporting requirements of § 6051(a), reporting on Form W-2 the \$300 payment and the income tax withheld. Section 6041(a) does not require reporting of the \$200 payment because the total of the two payments is less than \$600 for the calendar year.

Discussion of Situation 4:

Section 6051 applies to Situation 4 because the \$300 payment was subject to income tax withholding. So the employer knows it must report the \$300 on a Form W-2. To determine whether the \$200 payment must also be reported the employer looks to section 6041. Under section 6041, the \$200 payment for election worker services does not need to be reported on the Form W-2 because the sum of both payments is less than \$600. Although Rev Rul 2006-6 does not discuss the FICA tax treatment of the non-election worker payments, if Y's non-election worker services were not covered by a 218 agreement, Y's non-election worker wages would be subject to mandatory OASDI and Medicare because Y is not a member of the retirement system. If Y's non-election worker services were covered by a 218, then Y's non-election worker wages would be subject to both OASDI and Medicare by virtue of the 218 agreement.

Situation 5 Facts:

Government E pays Z \$200 in a calendar year for services as an election worker. E also employed Z in another capacity, in which Z earned wages of \$500 that are subject to income tax withholding. The services of E's election workers are not covered by a § 218 agreement. Z is not covered by a retirement plan maintained by E.

Situation 5 Holding:

Neither FICA tax nor income tax withholding applies to the \$200 paid to Z for services as an election worker, but the \$500 payment is subject to income tax withholding. Government E must follow the reporting requirements of §§ 6041(a) and 6051(a), reporting on Form W-2 both the \$200 and the \$500 payments and the amount of income tax withheld.

Discussion of Situation 5:

As in Situation 4, this example illustrates when information reporting is required and what amount of the payments must be reported. In contrast to Situation 4, Z has received a total amount of payments in excess of \$600. In addition, the \$500 was subject to income tax withholding. Thus, E must report these amounts on a Form W-2. However in this case, E could elect to furnish separate Forms W-2 for each respective payment. Although Rev Rul 2006-6 does not discuss the FICA tax treatment of the non-election worker payments, if Z's non-election worker services were not covered by a 218 agreement, Z's non-election worker wages would be subject to mandatory OASDI and Medicare because Z is not a member of the retirement system. If Z's non-election worker services were covered by a 218, then Z's non-election worker wages would be subject to both OASDI and Medicare by virtue of the 218 agreement.

Additional Fact Patterns

Example 1:

Government V pays individual A \$450 for performing election worker services. A is not employed in any other capacity by V. V has a section 218 agreement, which covers all election worker services payments. A is not a member of V's retirement system.

Discussion of Example 1:

A's services as an election worker are covered by a section 218 agreement. Under the agreement, payments for election worker services are subject to FICA. Therefore, the \$450 payment to A is subject to FICA. See, Code section 3121(b)(7)(E).

Section 6051 requires employers to report payments on Form W-2 if the amounts are withheld pursuant to FICA or the Code's income tax withholding provisions. Since the \$450 payment is subject to FICA withholding, section 6051(a) requires V to report the payment on a Form W-2.

Example 2:

Government W paid individual B \$700 for performing election worker services in 2007. B is not employed by W in any other capacity. W has a section 218 agreement, which does not cover election worker services, if the payment is less than the amounts provided for in sections 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V), (both \$1,300 for 2007). B is not a member of W's retirement system.

Discussion of Example 2:

B's election worker services are not covered by the terms of the section 218 agreement, since the \$700 payment is less than the 2007 threshold amount. Therefore, the

payment is not subject to FICA under section 3121(b)(7)(E). In addition, B is not a member of a retirement system maintained by W; therefore, B's election worker services are not excepted from the OASDI portion of FICA under section 3121(b)(7)(F). However, the \$700 payment for B's election worker services to B is below both sections 3121(b)(7)(F)(iv)'s and 3121(u)(2)(B)(ii)(V)'s threshold amount for 2007. Therefore, the payments are not subject to any FICA tax.

Section 1.6041-2(a)(1) of the Income Tax Regulations requires employers to report payments to employees of \$600, or more, on a Form W-2. Government W is required to issue Form W-2 to B since W's payment for B's election worker services is more than \$600.

Example 3:

Government X paid individual C \$700 for performing election worker services in January of 2007. In December of the same year, C performs additional election worker services and is paid an additional \$700. X does not have a section 218 agreement. C is not a member of X's retirement system.

Discussion of Example 3:

C's services as an election worker are not included in a section 218 agreement, and therefore, the services are not subject to FICA under section 3121(b)(7)(E). C is also not a member of a retirement system maintained by X, and therefore, C's election worker services are not excepted from the OASDI portion FICA under section 3121(b)(7)(F). For calendar year 2007, the threshold amount under both section 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V) is \$1,300. Since the total payments to C for election worker services provided to X is \$1,400, the entire amount is subject to FICA. If X did not withhold FICA on the first \$700 payment to C, it will need to withhold FICA for the entire \$1,400 from the second \$700 payment.⁷

Section 6051(a) of the Code requires employers to report payments on Form W-2 if any amounts are withheld from the payments under either the FICA or income tax withholding provisions. Since the entire \$1,400 paid to C for elections worker services is subject to FICA withholding, the section 6051(a) requires X to report the payment to C on a Form W-2.

Example 4:

During 2007 Government Y employed individual D, in a full-time position, as an administrative assistant. Y paid D \$30,000 for the performance of

⁷ With respect to the employer portion of the FICA X may make an interest free adjustment under section 6205 of the Code.

administrative services. D is a member of Y's retirement system. In addition, Y also paid D \$1,400 for performing election worker services during 2007. Y does not have a section 218 agreement.

Discussion of Example 4:

In this example each payment must be separately analyzed for FICA purposes. D's services as an administrative assistant are not included in a section 218 agreement, and therefore, such services are not subject to FICA under section 3121(b)(7)(E). However, D's status as a member of in Y's retirement system excepts D's administrative services from employment under section 3121(b)(7)(F). Therefore, such services are not subject to the OASDI portion of FICA, and whether the services are subject to the HI portion of FICA under section 3121(u)(2) depends upon whether D meets the continuing employment exception.

D's services as an election worker are also not covered by a section 218 agreement, and therefore, such services are also not subject to FICA under section 3121(b)(7)(E). In addition, D's status as a member in Y's retirement system also except D's electoral services from the OASDI portion of FICA under section 3121(b)(7)(F). See, section 31.3121(b)(7)-2(c)(2) of the Employment Tax Regulations. Note, the fact that the payment is above section 3121(b)(7)(F)(iv)'s dollar threshold is irrelevant for purposes of the OASDI portion of FICA, because all services performed by D are excluded from employment. See, id. However, section 31.3121(b)(7)-2(c)(2) does not except D's electoral services from the HI portion of FICA since section 3121(u)(2)(B)(ii)(V)'s applicable dollar threshold has been exceeded.

Section 6051(a) of the Code requires employers to report payments on Form W-2 if any amounts are withheld pursuant to either the FICA or income tax withholding provisions. Since the \$30,000 paid for administrative assistant services is subject to income tax withholding, section 6051(a) requires Y to report such amount on a Form W-2. Section 1.6041-2(a)(1) of the Income Tax Regulations requires payments that are not subject to income tax withholding nevertheless be reported on Form W-2, if the total compensation payments made to an employee are \$600 or more in a calendar year. In the present example, Y paid \$31,400 for administrative services and election worker services, which is clearly greater than \$600. Therefore, the \$1,400 payment must also be reported on a Form W-2.

Example 5:

During 2005 Government Z employed individual E, in a full-time position, as an administrative assistant. Z paid E \$30,000 for the performance of administrative services. E's position as an administrative assistant is covered by Z's section 218 agreement. In addition, Z also paid D \$1,400 for election worker services during 2007. The section 218 agreement

does not cover election worker services. E is not a member of a retirement plan maintained by Z.

Discussion of Example 5:

There are two separate payments which need to be analyzed for FICA purposes. E's services as an administrative assistant are included in a section 218 agreement, and therefore, the \$30,000 is subject to FICA.

E's services as an election worker, on the other hand, are not included in a section 218 agreement, and thus, not subject to FICA under section 3121(b)(7)(E). E is not a qualified participant of a retirement system maintained by Z, and therefore, the section 3121(b)(7)(F) does not exclude the services from the OASDI portion of FICA. Additionally, E's electoral services are not excepted from employment under sections 3121(b)(7)(F)(iv) and 3121(u)(2)(B)(ii)(V), since each section's respective dollar threshold of \$1,300 has been exceeded. Therefore, the entire \$1,400 is subject to both portions of FICA.

Section 6051(a) of the Code requires employers to report payments on Form W-2 if any amounts are withheld pursuant to either the FICA or income tax withholding provisions. Since the \$30,000 paid for administrative assistant services is subject to income tax withholding, section 6051(a) requires Z to report such amount on a Form W-2. The \$1,400 payment for E's election worker services must also be reported on a Form W-2 since it is subject to FICA.

Conclusion

In sum, when an employee performs both election and non election worker services for the same entity determining to what extent the payments for the election worker services are subject to FICA is very complex. To the extent a taxpayer suggests in an examination that the FICA tax treatment of payments for election worker services controls whether all payments are subject to FICA tax that argument should be rejected. In fact, the argument is really the converse, an employee who is a member of the entity's retirement system will not be subject to the OASDI portion of the FICA tax on payments for election worker services.



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If you have any further questions, please call me at 202-622-6010 or Michael Skutley of my staff at 202-622-6040.

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